



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

February 25, 2010

S. 1147 **Prevent All Cigarette Trafficking Act of 2009**

As reported by the Senate Committee on the Judiciary on November 19, 2009

SUMMARY

S. 1147 would require individuals and businesses that make interstate sales of cigarettes or smokeless tobacco to comply with state tax laws and register with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATFE). The bill would permit ATFE to inspect the premises of anyone who distributes or sells more than 10,000 cigarettes or 500 cans or packages of smokeless tobacco in a month via telephone, the mail, or the Internet. S. 1147 also would increase penalties, including criminal and civil fines, for violations of the laws relating to taxation of cigarettes and smokeless tobacco. Finally, the bill would prohibit the use of the United States Postal Service to mail certain tobacco products.

CBO estimates that implementing S. 1147 would cost \$120 million over the 2011-2015 period, assuming appropriation of the necessary amounts. Enacting the bill could affect direct spending and receipts, but we estimate that any such effects would not be significant.

S. 1147 would impose both intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on certain tobacco sellers, common carriers, and individuals. The bill also would preempt state, local, and tribal laws regulating the delivery of tobacco products. CBO expects that the direct costs to comply with those mandates would not be significant and would not exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$70 million and \$141 million respectively, in 2010, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1147 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice). In addition to the costs shown below, enacting S. 1147 could affect direct spending and receipts. However, we estimate that any such effects would be insignificant for each year.

	By Fiscal Year, in Millions of Dollars					2011-2015
	2011	2012	2013	2014	2015	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	18	25	26	27	28	124
Estimated Outlays	15	24	26	27	28	120

BASIS OF ESTIMATE

CBO estimates that implementing S. 1147 would cost \$120 million over the 2011-2015 period. For this estimate, CBO assumes that the bill will be enacted by the end of fiscal year 2010. We assume that the necessary amounts will be appropriated by the start of each fiscal year and that spending will follow historical patterns for similar activities.

Spending Subject to Appropriation

S. 1147 would permit ATFE to inspect the premises of businesses that distribute or sell more than 10,000 cigarettes or 500 cans or packages of smokeless tobacco each month via telephone, the mail, or the Internet. Under the bill, the agency expects that it would need to conduct inspections of about 7,500 businesses each year. ATFE anticipates that it would need to hire about 130 new employees, including inspectors, agents, auditors, and support personnel, to carry out inspections and any subsequent investigations into illegal activity. Once fully phased in, CBO estimates that the costs of additional employees under the bill would reach \$25 million annually, including salaries, benefits, training, equipment, upgraded computer systems, and support costs. For this estimate, we assume that the new positions would be fully staffed by fiscal year 2012 and that costs would be adjusted for anticipated inflation.

Revenues and Direct Spending

Enacting S. 1147 could increase collections of civil and criminal fines for violations of the bill's provisions relating to the sale of cigarettes and smokeless tobacco. CBO expects that any additional collections would not be significant because of the relatively small number of additional cases likely to be affected. Criminal and civil fines are recorded in the budget as revenues.

Under the bill's provisions, some of those fines would not be available for spending, some would be deposited in the Crime Victims Fund and later spent, and others would be deposited in new funds established by the bill and later spent. (Deposits into one of those

new funds would be spent by the U.S. Postal Service and thus would be classified as off-budget.) CBO estimates that spending of fines collected under S. 1147 would not be significant.

S. 1147 would prohibit the use of the Postal Service to mail most tobacco products. This could affect revenue and spending by the Postal Service, depending on how the agency decides to enforce this provision and regulate the exceptions permitted by the bill. The Postal Service attempts to enforce current laws on nonmailable matter but inspects a very small fraction of the 170 billion or so pieces of mail it delivers each year. CBO expects that enacting S. 1147 would not lead to a significant increase in those inspections and thus implementing the bill would not have a significant effect on net Postal Service spending.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 1147 contains both intergovernmental and private-sector mandates, as defined in UMRA, by imposing new requirements on certain sales of tobacco products by private and tribal entities and preempting state, local, and tribal laws. CBO estimates that the costs of complying with the requirements in the bill would not exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$70 million and \$141 million, respectively, in 2010, adjusted annually for inflation).

Requirements on Delivery Sales of Tobacco

S. 1147 would require delivery sellers of tobacco products to comply with certain requirements regarding reporting, shipping, recordkeeping, and collecting taxes. Delivery sellers include those businesses that sell or deliver tobacco products purchased online, by catalog, or by phone. The bill also would prohibit importers and interstate sellers of tobacco from selling cigarettes produced by companies that are not in full compliance with the terms of the tobacco settlement agreement between states and tobacco manufacturers and sellers. Those requirements would be both intergovernmental and private-sector mandates because tobacco delivery sales are conducted by both private-sector and tribal entities.

S. 1147 also would require common carriers and delivery services to keep records for five years of any business relating to a delivery that has been interrupted because the carrier or service determines or has reason to believe that the person ordering the delivery is in violation of this legislation. In addition, the bill would prohibit individuals who currently send or receive tobacco products in the mail from mailing such tobacco products in the continental United States through the Postal Service.

According to ATFE and industry sources, most of the entities affected by the requirements already perform many of the duties required by the bill, and CBO estimates that the additional requirements would impose minimal additional costs.

Preemption of State, Local, and Tribal Laws

The bill also would preempt state, local, and tribal laws that require common carriers and delivery services to verify the age and require the signature of the individual accepting a tobacco delivery or place other restrictions on those services. CBO expects that the preemption would impose minimal costs on state, local, or tribal governments.

Other Impacts on State, Local, and Tribal Governments

S. 1147 would benefit state, local, and tribal governments by expanding their authority to collect cigarette taxes through the Jenkins Act. This expanded authority would allow state attorneys general or the chief law enforcement official of a local or tribal government to file charges in U.S. district courts against sellers or deliverers who violate this law. The bill also would preserve existing agreements between states and tribal governments regarding cigarette taxes.

PREVIOUS CBO ESTIMATE

On May 18, 2009, CBO transmitted a cost estimate for H.R. 1676, the Prevent All Cigarette Trafficking Act of 2009, as ordered reported by the House Committee on the Judiciary on April 28, 2009. The two bills are similar and both grant permission to ATFE to inspect the premises of certain businesses. H.R. 1676 also would authorize the appropriation of \$8.5 million annually over five fiscal years for ATFE to improve the enforcement of laws governing the sale of tobacco. CBO estimated that implementing H.R. 1676 would cost about \$160 million over the 2010-2014 period, assuming appropriation of the necessary amounts.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz
Impact on State, Local, and Tribal Governments: Melissa Merrell
Impact on the Private Sector: Samuel Wice

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis